

A091 (Rev. 8/01) Criminal Complaint

MAR 4 2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

V.

Roberto Alejandro DAVILA Jr.

CRIMINAL COMPLAINT

Case Number: C-15-242M

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about 3/2/2015 in Kenedy County, in the

(Date)

Southern District of Texas defendant(s), Roberto Alejandro Davila

did knowingly or in a reckless disregard of the fact that an alien had come to, entered, or remained in the United States in violation of law, transport, or move or attempt to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law

in violation of Title 8 United States Code, Section(s) 1324.
I further state that I am a(n) Border Patrol Agent and that this complaint is based on the following facts:
Official Title

See Attached Affidavit of U.S. Border Patrol Agent

Robert Pina

Continued on the attached sheet and made a part of this complaint:

☒ Yes☐ No

Signature of Complainant

Robert Pina

Printed Name of Complainant

Sworn to before me and signed in my presence and probable cause found on:

March 4, 2015

Date

at 1:35pm

at

Corpus Christi, Texas

City and State

B. Janice Ellington, U.S. Magistrate Judge

Name and Title of Judicial Officer

Signature of Judicial Officer

Affidavit

The information contained in this report/affidavit is based upon my personal participation in the investigation, which included, but is not limited to information related to me by other agents and officers participating in the investigation.

SYNOPSIS:

On March 2, 2015 at approximately 8:00 p.m. Roberto Alejandro DAVILA JR. was apprehended by Border Patrol Agents at the Sarita, Texas United States Border Patrol Checkpoint attempting to smuggle seven undocumented immigrants.

FACTS/PROBABLE CAUSE:

On March 2, 2015 BPA Ricardo Amaya was performing his assigned primary inspection duties at the Sarita, Texas USBP Checkpoint. At approximately 8:00 p.m. a black Chevrolet Avalanche approached his primary lane of inspection. Once the vehicle came to a stop, agent Amaya conducted an immigration inspection of the driver (later identified as Roberto Alejandro DAVILA JR.) and determined that he was a United States Citizen. During agent Amaya's questioning, the driver DAVILA, told him that he was traveling to Corpus Christi, Texas in order to visit his grandmother. During primary inspection, agent Amaya asked DAVILA for a form of identification. BPA Amaya noticed that while DAVILA was handing over his identification to him, DAVILA was visibly shaking. Concurrently, from agent Amaya's questioning, BPA Brian Lemay was conducting a free air sniff of the vehicle with his canine partner Monza. Agent Lemay then notified agent Amaya that his canine was alerting to the vehicle. At this moment, agent Amaya considered the fact that DAVILA was apparently nervous and the fact that the canine handler was telling him that his canine partner was alerting to the vehicle so agent Amaya referred the vehicle to secondary for a further inspection.

Once in the secondary inspection area, DAVILA was asked to get out of the vehicle and have a seat in the benches located outside the checkpoint. Once DAVILA was out of the vehicle, agent Lemay conducted a systematic canine search of the vehicle. Once agent Lemay was done with the search, he advised agent Amaya that his dog was alerting and indicating underneath the back seat of the truck. At this point, agent Amaya used his flashlight to look underneath the back seat and was able to see that there were people lying in the bed of the truck (which naturally connects with the interior of the truck and can be seen from the back seat of the truck). As agents proceeded to get the individuals out of the truck, they noticed that all seven individuals were locked in the bed of the truck with an original/factory bed cover which was securely fastened with aftermarket screws from the outside. Agents also noticed that the tailgate handle was broken and could not be opened, as a normal truck's tail gate would traditionally open from. Agents then noticed that there was no access to fold down the seats from within the bed of the truck giving the subjects no way of getting out voluntarily. Agents also observed that the subjects appeared to be crammed in next to each other, giving them minimal room for movement. After making all these observations and trying to find a way to remove the aliens, Agent Alfonso Villafuerte lifted the latch to fold the back seat down and away from the bed of the truck, which was only accessible from the inside of the truck and not from the bed of the truck. After moving the backseat out of the way, Agent Villafuerte helped the aliens crawl out of the bed of the truck by crawling slowly through the right rear passenger door, which connects into the bed of the truck. After all subjects were removed from the truck, all subjects were placed under arrest and taken into the checkpoint for processing.

A search incident to arrest revealed several Glade air freshener bottles along with scented dryer sheets that were found lodged in-between the back seat and the bed of the truck. According to agents on

scene, this is a common tactic used by alien smuggling organizations for the purpose of concealing human or narcotic scents that U.S. Border Patrol canine dogs are trained to detect.

MIRANDA WARNINGS:

Once inside the checkpoint, BPA Ricardo Amaya, read DAVILA his Miranda Rights, in his preferred language of English, as per DHS form I-214 on March 2, 2015 at approximately 8:20 p.m. The driver stated that he understood his rights and was willing to make a statement without the presence of an attorney. Agent Amaya also read the material witnesses their Miranda Rights, in their preferred language of Spanish, as per DHS form I-214 on March 2, 2015 at approximately 8:30 p.m. The material witnesses signed their rights accordingly and stated they were willing to make a statement without the presence of an attorney.

PRINCIPAL'S STATEMENT: Roberto Alejandro DAVILA Jr.,

DAVILA stated that he was in McAllen, Texas for a prenatal care appointment on February 23, 2015. He stated that he was outside of the hospital smoking a cigarette and struck up a small conversation about the weather with an individual. The individual asked DAVILA about his employment and how much money he made. At that time, the individual told DAVILA that he had a job for him if he wanted to make additional money. It was at that time, that they exchanged contact information for a future job. DAVILA stated that he did not have contact with this individual until March 2, 2015 between eight and nine in the morning. According to DAVILA, they got in contact with each other and made arrangements to meet at the Home Depot store located in McAllen, Texas at noon. Once they met at the aforementioned location, the individual explained to DAVILA that he wanted a vehicle driven to Houston, Texas and once DAVILA did that, the individual would pay DAVILA \$4,000 for driving the vehicle up. DAVILA was instructed to take the vehicle up to Houston then to take a bus back to McAllen, Texas where they would meet and DAVILA would be paid. DAVILA stated that he then picked up the Chevrolet Avalanche at the Wal-Mart on McCall Rd. in McAllen, Texas on that same day at approximately 6:00 pm. DAVILA also stated that the individual instructed him to take Highway 77 and to tell Border Patrol Agents at the checkpoint that he was going to Corpus Christi, Texas to visit his grandmother. DAVILA mentioned that the details of the job worried him, but he needed the money and the individual offering the job reassured him that everything was going to be okay. DAVILA stated that the reason this job worried him was because he believed the truck he was to drive up to Houston was possibly stolen or loaded with drugs and he believed that he was doing something illegal for that large amount of money.

MATERIAL WITNESS STATEMENT: Geiman Guillermo HERNANDEZ

MIRANDA WARNINGS: The subject was advised of his rights as per form I-214 in the Spanish language by BPA Ricardo Amaya at 8:30 p.m. The subject signed the form indicating that he understood his rights and that he was will to make a statement without the presence of an attorney.

HERNANDEZ stated that his brother-in-law made the smuggling arrangements for him so he doesn't know the complete details but he does know that the fee was \$10,500.00 to get him all the way to Florida. He added that half of the fee was already paid by his brother-in-law. HERNANDEZ stated that he and several others were smuggled into the United States by crossing the Rio Grande River near Hidalgo, Texas on March 1, 2015. After crossing the river, the guide led them walking for approximately 4 hours before reaching a house in McAllen, Texas. The subject claimed that all the others in the group were in the same house in McAllen. After one night they were moved to another house where they were allowed to shower and change clothing. HERNADNEZ further claimed that after 3 hours, they were placed in the bed of the pickup truck by an unknown individual and proceeded north. HERNANDEZ stated that they were instructed by someone at the second house that they would be going through a

checkpoint so they would needed to be extremely quiet. HERNADNEZ was asked if the subject who was driving the vehicle was the same subject that placed them in the pickup truck and HERNADEZ replied that he had not seen the driver of the vehicle before. HERNANDEZ claimed that he saw him at the checkpoint for the first time after they were arrested.

MATERIAL WITNESS STATEMENT: Leonel Dasaev FERNANDEZ-Giron

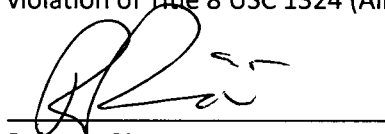
MIRANDA WARNINGS: The subject was advised of his rights as per form I-214 in the Spanish language by BPA Ricardo Amaya at 8:30 p.m. The subject signed the form indicating that he understood his rights and that he was willing to make a statement without the presence of an attorney.

Subject Leonel Dasaev Fernandez-Giron is a citizen and national of Honduras. FERNANDEZ stated that he entered the United States by wading the Rio Grande River on November 5, 2014. Once in the United States FERNADNEZ was taken to a ranch near McAllen, Texas where he worked for a period of fifteen weeks. FERNANDEZ states the he was paid \$1500.00for his work at the ranch. FERNANDEZ finally decide to leave the ranch to join his family further up in the United States. FERNANDEZ contacted his family and they made the arraignments to transport him north. FERNADNEZ was then taken to a WAL-MART in McAllen, Texas where he was picked up and taken to hotel. After a week at the hotel, FERNANDEZ was taken to a house where he was told to get into the bed of a Chevrolet Avalanche. FERNANDEZ states that he and six other individuals were then put into the bed of the truck. After approximately two hours of travel without interruption, they arrived at the Sarita Checkpoint where they were all apprehended.

ADDITIONAL INFORMATION:

The remaining undocumented aliens in the case were debriefed by Agent Eric Castillo and Agent Ricardo Amaya and they did not offer any exculpatory statements.

Assistant U.S. Attorney Kenneth A. Cusick was contacted and accepted prosecution of this case for violation of Title 8 USC 1324 (Alien Smuggling).



Roberto Pina
Border Patrol Agent

Sworn to and subscribed before me on this 4th day of March, 2015



B. Janice Ellington
United States Magistrate Judge